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8 Counsel for Defendants HILTON HOTELS CORP.,
9 HILTON SUPPLY MANAGEMENT, INC., KEVIN A. BARRY,
10 and KEVIN BARRY FINE ART ASSOCIATES

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**

14 BERENICE BRACKETT,

15 Plaintiff,

16 vs.

17 HILTON HOTELS CORP., et al.,

18 Defendants.

Case No. C08-2100-WHA

**DEFENDANTS' ANSWER TO
PLAINTIFF'S COMPLAINT**

19 COMES NOW the Defendants Hilton Hotels Corporation, Hilton Supply
20 Management, Incorporated, Kevin A. Barry, and Kevin Barry Fine Art Associates
(collectively "Defendants"), by and through their attorneys, answers the allegations of
21 Plaintiff Berenice Brackett as follows:

ANSWER TO PLAINTIFF'S COMPLAINT

22 Defendants admit the allegation in Plaintiff's initial unnumbered, introductory
23 paragraph that the allegedly infringing works are not identical to the works allegedly
24 created by Plaintiff. Defendants deny the remaining allegations contained within
25 Plaintiff's initial unnumbered, introductory paragraph. (This unnumbered paragraph is
26 part of the Complaint at 1:23-2:6.)

JURISDICTION

1
2 1. Defendants admit the allegations contained within Paragraph One (1) of
3 the Complaint with respect to subject matter jurisdiction over Plaintiff's First and
4 Second Causes of Action only. Defendants deny any other allegations set forth in
5 Paragraph One (1) of the Complaint.

6 2. Defendants admit the allegations contained within Paragraph Two (2) of
7 the Complaint with respect to Plaintiff's state law claims arising out of the same case
8 and controversy as her copyright infringement claims only. Defendants deny each
9 and every additional allegation of Paragraph Two (2) of the Complaint.

VENUE

10
11 3. Defendants deny each and every allegation of Paragraph Three (3) of the
12 Complaint.

13 4. Defendants admit the allegation in Paragraph Four (4) with respect to this
14 being an intellectual property action.

PARTIES

15
16 5. Defendants deny each and every allegation contained within Paragraph
17 Five (5) of the Complaint on the basis that Defendants are without sufficient
18 knowledge or information to form a belief as to the truth of the allegation contained
19 therein.

20 6. Defendants admit the allegation contained within Paragraph Six (6) that
21 Hilton Hotels Corp. is incorporated under the laws of Delaware, registered to do
22 business in California, and headquartered at 9336 Civic Center Drive, Beverly Hills,
23 California. Defendants deny any other allegation set forth in Paragraph Six (6) of the
24 Complaint.

25 7. Defendants admit the allegation contained within Paragraph Seven (7)
26 that Hilton Supply Management, Inc. is a subsidiary of Hilton Hotels Corp.,
27 incorporated under the laws of Delaware, registered to do business in California, and
28

1 headquartered at 9336 Civic Center Drive, Beverly Hills, California. Defendants deny
2 any other allegation set forth in Paragraph Seven (7) of the Complaint.

3 8. Defendants admit the allegation contained within Paragraph Eight (8) that
4 Kevin A. Barry is an individual residing in California. Defendants affirmatively aver
5 that Kevin A. Barry resides in the Los Angeles area. Defendants deny any other
6 allegation set forth in Paragraph Eight (8) of the Complaint.

7 9. Defendants admit the allegation contained within Paragraph Nine (9) that
8 Kevin Barry Fine Art Associates is a California corporation with a business address of
9 8210 Melrose Avenue, Los Angeles, California. Defendants deny any other allegation
10 set forth in Paragraph Nine (9) of the Complaint.

11 10. Defendants deny each and every allegation contained within Paragraph
12 Ten (10) of the Complaint on the basis that Defendants are without sufficient
13 knowledge or information to form a belief as to the truth of the allegation contained
14 therein.

15 11. Defendants deny each and every allegation contained within Paragraph
16 Eleven (11) of the Complaint on the basis that Defendants are without sufficient
17 knowledge or information to form a belief as to the truth of the allegation contained
18 therein.

19 ALLEGED FACTS

20 12. Defendants deny each and every allegation contained within Paragraph
21 Twelve (12) of the Complaint on the basis that Defendants are without sufficient
22 knowledge or information to form a belief as to the truth of the allegation contained
23 therein.

24 13. Defendants deny each and every allegation contained within Paragraph
25 Thirteen (13) of the Complaint on the basis that Defendants are without sufficient
26 knowledge or information to form a belief as to the truth of the allegation contained
27 therein.
28

1 14. Defendants deny each and every allegation contained within Paragraph
2 Fourteen (14) of the Complaint on the basis that Defendants are without sufficient
3 knowledge or information to form a belief as to the truth of the allegation contained
4 therein.

5 15. Defendants admit the allegation contained within Paragraph Fifteen (15)
6 that Kevin A. Barry purchased three giclees. Defendants deny each and every other
7 allegation contained within Paragraph Fifteen (15) of the Complaint.

8 16. Defendants deny each and every allegation contained within Paragraph
9 Sixteen (16) of the Complaint.

10 17. Defendants admit the allegation contained within Paragraph Seventeen
11 (17) that 934 of the allegedly infringing prints were sold to the Hilton. Defendants
12 deny each and every other allegation contained within Paragraph Seventeen (17) of
13 the Complaint.

14 18. Defendants admit the allegation contained within Paragraph Eighteen
15 (18) that Homewood Suites is a division of Hilton Hotels Corp. Defendants deny any
16 other allegation set forth in Paragraph Eighteen (18) of the Complaint.

17 19. Defendants admit the allegation contained within Paragraph Nineteen
18 (19) that the allegedly infringing works have appeared on the Homewood Suites web
19 pages. Defendants deny each and every other allegation contained within Paragraph
20 Nineteen (19) of the Complaint.

21 20. Defendants admit the allegation contained within Paragraph Twenty (20)
22 that the allegedly infringing works are not identical to the works allegedly created by
23 Plaintiff. Defendants deny any other allegation set forth in Paragraph Twenty (20) of
24 the Complaint.

25 21. Defendants deny each and every allegation contained within Paragraph
26 Twenty-one (21) of the Complaint.

First Cause of Action

22. Defendants incorporate by reference their Answers set forth above in Paragraphs One (1) through Twenty-one (21) as though set forth in full herein.

23. Defendants deny each and every allegation contained within Paragraph Twenty-three (23) of the Complaint.

24. Defendants deny each and every allegation contained within Paragraph Twenty-four (24) of the Complaint.

25. Defendants deny each and every allegation contained within Paragraph Twenty-five (25) of the Complaint.

26. Defendants deny each and every allegation contained within Paragraph Twenty-six (26) of the Complaint.

27. Defendants deny each and every allegation contained within Paragraph Twenty-seven (27) of the Complaint.

Second Cause of Action

28. Defendants incorporate by reference their Answers set forth above in Paragraphs One (1) through Twenty-seven (27) as though set forth in full herein.

29. Defendants deny each and every allegation contained within Paragraph Twenty-nine (29) of the Complaint.

30. Defendants deny each and every allegation contained within Paragraph Thirty (30) of the Complaint.

Third Cause of Action

31. Defendants incorporate by reference their Answers set forth above in Paragraphs One (1) through Thirty (30) as though set forth in full herein.

32. Defendants deny each and every allegation contained within Paragraph Thirty-two (32) of the Complaint on the basis that Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegation contained therein.

1 33. Defendants deny each and every allegation contained within Paragraph
2 Thirty-three (33) of the Complaint.

3 34. Defendants deny each and every allegation contained within Paragraph
4 Thirty-four (34) of the Complaint.

5 35. Defendants deny each and every allegation contained within Paragraph
6 Thirty-five (35) of the Complaint.

7 36. Defendants deny each and every allegation contained within Paragraph
8 Thirty-six (36) of the Complaint.

9 Fourth Cause of Action

10 37. Defendants incorporate by reference their Answers set forth above in
11 Paragraphs One (1) through Thirty-six (36) as though set forth in full herein.

12 38. Defendants deny each and every allegation contained within Paragraph
13 Thirty-eight (38) of the Complaint on the basis that Defendants are without sufficient
14 knowledge or information to form a belief as to the truth of the allegation contained
15 therein.

16 39. Defendants deny each and every allegation contained within Paragraph
17 Thirty-nine (39) of the Complaint.

18 40. Defendants deny each and every allegation contained within Paragraph
19 Forty (40) of the Complaint.

20 41. Defendants deny each and every allegation contained within Paragraph
21 Forty-one (41) of the Complaint.

22 42. Defendants deny each and every allegation contained within Paragraph
23 Forty-two (42) of the Complaint.

24 Affirmative Defenses

25 Pleading further and without waiving the above Answer, Defendants assert that
26 Plaintiff's claims are barred in whole or in part, based on one or more of the following
27 affirmative defenses:
28

First Affirmative Defense – Failure to State a Claim for Relief

43. Plaintiff fails to state a claim upon which any relief can be granted.

Second Affirmative Defense – Fault of Others

44. Defendants allege any damages, injuries, and/or losses were approximately caused and contributed to by the misconduct of parties other than Defendants.

Third Affirmative Defense – Failure to Mitigate

45. Plaintiff failed to appropriately mitigate the alleged damages, injuries, and her losses. Therefore, any recovery against Defendant should be barred or reduced accordingly.

Fourth Affirmative Defense – Statute of Limitations

46. Defendants are informed and believe and thereon allege that the Complaint in each and every alleged cause of action contained therein is barred by applicable statute of limitations.

Fifth Affirmative Defense – Estoppel and Waiver

47. Plaintiff is estopped from recovering any damages, injuries, and/or losses from Defendants as a result of Plaintiffs conduct and of the conduct of others.

Sixth Affirmative Defense – Laches

48. Plaintiff's claims are barred in whole or in part by the Doctrine of Laches.

Seventh Affirmative Defense – Unclean Hands

49. Plaintiff's claims are barred in whole or in part by the Doctrine of Unclean Hands.

Eighth Affirmative Defense – Damages are Speculative

50. Plaintiff's damages are speculative.

Ninth Affirmative Defense – Reservation of Rights

51. Defendants reserve the right to assert other affirmative defenses which have become appropriate after discovery.

Tenth Affirmative Defense — Copyright Misuse

52. Plaintiff has engaged in copyright misuse through the filing of this Complaint.

WHEREFORE, the Defendant prays that the Plaintiffs take nothing by reason of their complaint and that the same be dismissed with prejudice and that Defendant be awarded to recover attorneys fees included herein to the extent permitted by law, contract or statute.

WHEREFORE, that the Defendants recover the costs of suit herein, attorneys' fees, and/or that Defendants be granted such further relief as the Court deems just and proper.

VENABLE LLP



DATED: July 14, 2008

Thomas J. Speiss, III
Counsel for Defendants

VENABLE LLP

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CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2008, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF which will send electronic notification of such filing to the following:

Marc N. Bernstein, Esq.

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DATED: July 14, 2008

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